IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 24228 of 2005(H)

OS.29/2005 of MUNI-MAGI.COURT,THODUPUZHA

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PETITIONER:

V.K.SCARIA, VADAKKEKKUDY HOUSE,
VADUVAKODE KARA, MANJALLOOR VILLAGE,
MUVATTUPUZHA TALUK.

BY ADV. SRI.V.K.SUNIL

RESPONDENTS:

SURESH KUMAR, ULLAPPALLIL HOUSE,
KAIMANNOOR, THODUPUZHA.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE PLAINT IN OS NO. 29/2004 OF THE MUNSIFF'S COURT, THODUPUZHA

EXT.P2 TRUE COPY OF THE AGREEMENT DATED 11.2.2004

EXT.P3 TRUE COPY OF THE IA NO. 1125 OF 2005 FILED BY THE PETITIONER ALONG WITH ITS SUPPORTING AFFIDAVIT.

EXT.P4 TRUE COPY OF THE ORDER PASSED BY THE LEARNED MUNSIFF IN I.A.NO. 1125/2005

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 24228 OF 2005

Dated this the 27th day of February, 2007

JUDGMENT

Petitioner is challenging Ext.P4 order whereunder the Munsiff directed the petitioner to pay stamp duty and fine at the rate applicable to a bond based on which suit is filed. I heard counsel for the petitioner. Counsel for the petitioner has relied on the decisions of this Court in MATHAI MATHEW V. THAMPI, (1989) 1 K.L.T. 138 and in KRISHNANKUTTY V. JAYAKRISHNAN, (2005) 2 K.L.T. S.N. 26 (case no. 32) and contended that the document is only an agreement because it is a pre-existing debt acknowledged and agreed to be paid to the petitioner within a time frame. On going through the document, I am also of the view that acknolwdged amount was accepted as liability by the other party in favour of the petitioner. Therefore it cannot be said to be bond but is essentially an agreement to discharge the pre-existing liability. In the circumstances, W.P. is allowed vacating Ext.P4 with direction to the Munsiff to accept stamp duty and fine as applicable to an agreement.

(C.N.RAMACHANDRAN NAIR)
Judge